

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Rudolph McKenney & Cynthia McKenney-Pittman, Co-Administrators of the Estate of James Pittman

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Joseph Chaiken, Esq. - Joseph Chaiken & Associates
1800 JFK Blvd., Suite 810, Philadelphia, PA 19103
215-564-1800

DEFENDANTS

The United States of America

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Federal Tort Claims Act

Brief description of cause:
Tort Claims Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
10,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

FEB 28 2020

DATE
02/28/2020

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

20

1211

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 2714 N Sydenham Street, Philadelphia, PA 19132

Address of Defendant: 50 Irving Street, NW 118A, Washington, DC 20422

Place of Accident, Incident or Transaction: 2714 N Sydenham Street, Philadelphia, PA 19132

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- | | | |
|--|------------------------------|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 02/28/2020

Must sign here

Attorney at Law / Pro Se Plaintiff

31187

Attorney I.D. # (if applicable)

CIVIL: (Place a ☒ in one category only)

A. Federal Question Cases:

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☒ 1. All other Federal Question Cases

(Please specify): Tort Claims Act

B. Diversity Jurisdiction Cases:

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): _____
- ☐ 7. Products Liability
- ☐ 8. Products Liability - Asbestos
- ☐ 9. All other Diversity Cases

(Please specify): _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, Joseph Chaiken, Esq, counsel of record or pro se plaintiff, do hereby certify:

- ☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:
- ☐ Relief other than monetary damages is sought.

DATE: 02/28/2020

Sign here if applicable

Attorney at Law / Pro Se Plaintiff

31187

Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

TJS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Est. of James Pittman

v.

The United States of America

CIVIL ACTION

20**1211**

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

Date

2/28/20

Attorney-at-law

Attorney for

Telephone

215-564-1800

FAX Number

215-564-5524

E-Mail Address

jchaiken@jchaikenlaw.com

(Civ. 660) 10/02

FEB 28 2020

JOSEPH CHAIKEN & ASSOCIATES, P.C.

ATTORNEYS AT LAW
1800 JOHN F. KENNEDY BOULEVARD
FOURTEENTH FLOOR
PHILADELPHIA, PA 19103

(215) 564-1800
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JOSEPH CHAIKEN
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LEE S. BENDER**
KELSEY L. GAYNIER

NEW JERSEY OFFICE
5 SPLIT ROCK DRIVE
CHERRY HILL, NJ 08003

REPLY TO PHILADELPHIA OFFICE

*ALSO ADMITTED IN WASHINGTON, DC
**ALSO ADMITTED IN NEW JERSEY

February 28, 2020

20 1211

United States District Court
Eastern District of Pennsylvania
601 Market Street, Room 2609
Philadelphia, PA 19106-179
Attn: Clerk of Court

RE: Est of James Pittman v The United States of America
Civil Action No.: TBD

Dear Sir/Madam:

Enclosed please find an initial Complaint, Civil Coversheet, Case Management Track Designation Form, Designation Form, and a check in the amount of \$400.00 for filing with the Court.

Kindly return a time-stamped copy of the Complaint using the self-addressed stamped envelope provided within.

Thank you for your attention to this matter.

Very truly yours,

JOSEPH CHAIKEN & ASSOCIATES, PC



JOSEPH CHAIKEN, ESQUIRE

JC/bc
Enclosures

JOSEPH CHAIKEN & ASSOCIATES, P.C.

By: Joseph Chaiken, Esquire, Attorney I.D. No.31187
 1800 John F. Kennedy Boulevard, Suite 810
 Philadelphia, Pennsylvania 19103
 (215)564-1800
jchaiken@jchaikenlaw.com

ATTORNEY FOR PLAINTIFFS

Rudolph McKenney and
 Cynthia McKenney-Pittman
 Co-Administrators of
 The Estate of James Russell Pittman,
 on behalf of the Estate of
 James Russell Pittman, and the heirs of
 James Russell Pittman, and Cynthia Mc-
 Kenney Pittman in her own right
 2714 Sydenham Street
 Philadelphia, PA 19132

: IN THE UNITED STATES DISTRICT COURT
 : EASTERN DISTRICT OF PA

v.

The United States of America
 c/o U.S Department of Veterans Affairs
 Office of General Counsel
 Warminster, PA 18974
 1010 Delafield Road
 Pittsburgh, PA 15215

NO.:

And

120 Le Brun Road
 Buffalo, NY 14215

And

3900 Woodland Avenue
 Philadelphia, Pa. 19104

20 1211

COMPLAINT

1. Plaintiffs Rudolph McKenney and Cynthia McKenney Pittman are individuals, administrators of the Estate of James Russell Pittman who died on February 19, 2019. The administrators bring this claim for the injuries sustained by the decedent during his

lifetime, and for his wrongful death and for the injuries and losses sustained by his wife, Cynthia McKenney Pittman.

2. Defendant is the United States of America. Plaintiffs submitted a form 95 claim for Damage Injury or Death form on or about June 7, 2019 alleging that the defendant was negligent in regard to the maintenance and care of decedent's wheelchair lift. A copy of the form 95 is attached hereto as Exhibit A. The Plaintiffs incorporate the allegations set forth in the Form 95 form as if they were fully set forth herein. On September 3, 2019, the US Department of Veterans Affairs Office of Regional Counsel notified Plaintiff's counsel that it was denying Plaintiff's Claim.
3. Plaintiffs file this action alleging that the defendant was negligent in the maintenance and care of the decedent's wheelchair lift which resulted in a significant fall on September 11, 2017, and the injuries and death of the decedent and to preserve the time limitation period for filing such a claim.
4. As a result of the negligence of the defendant decedent sustained serious injury to his head, and body and severe nervous shock. He was rendered unconscious/semiconscious due to his fall. He had suffered severe nervous shock, and conscious pain and suffering, and he has incurred medical bills in an effort to effect a cure or amelioration of his injuries. As a result of his injuries he has been prevented from attending to his usual activities. All of his injuries were permanent and lasted until he died on February 19, 2019. Plaintiff died due to the injuries he sustained in this fall.
5. Defendant was negligent and careless in inter alia:
 - a. Failing to make certain the lift had adequate safety devices;
 - b. Failing to make certain that the lift worked properly;
 - c. Failing to replace the aforesaid lift,
 - d. Failing to secure the lift so as to avoid injury to persons using it;
 - e. Failing to replace parts of the lift;
 - f. Failing to take action to replace the lift
 - g. Otherwise acting in a careless and negligent manner.
 - h. Failing to immobilize the lift until repairs had been made
6. Plaintiff Cynthia Pittman is the wife of Plaintiff James Pittman and was his wife at the time of the aforesaid fall. Due to the fall and the injuries sustained by her husband Plaintiff, Cynthia Pittman sustained emotional distress, and a loss of consortium.

Count I Wrongful Death and Survival

7. All of the foregoing paragraphs are incorporated herein and made a part hereof as if fully set forth.

Wherefore, Plaintiff claims on behalf of the Estate of James Russell Pittman, and on behalf of the heirs of the Estate of James Russell Pittman and on behalf of Cynthia McKenney Pittman all Wrongful Death and Survival damages including, without limitation, all administrative, hospital, medical, funeral, burial expenses; loss of companionship, tutelage and affection, and all pain and suffering of James Russell Pittman from the date of injury until the date of death. The amount claimed is \$10,000,000.00.

Count II Cynthia McKenney Pittman –Loss of Consortium

8. All prior paragraphs are incorporated herein.

Wherefore, Plaintiff Cynthia Pittman claims damages for her emotional distress, and loss of consortium in an amount of \$10,000,000.00.

JOSEPH CHAIKEN & ASSOCIATES, PC

BY: 

JOSEPH CHAIKEN, ESQUIRE